IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 26 of 1993

LRS OF KHOOB CHAND
V/S
BOODH MAL & ANR.

Mr. HR SONI for Mr. SL SONI, for the appellant / petitioner

No body appears for the respondents.

Date of Order : 9.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed by the appellant against the order of the learned trial court dt. 31.10.92, dismissing the appellant's application under O. 39 Rule 2A C.P.C.

The appeal was admitted, and notices were sent to the respondents, but nobody appeared on their behalf.

The case of the appellant is, that in his suit for partition, on 14.5.1982, by a detailed speaking order interim injunction was granted, directing the defendants to maintain status quo, and to desist from raising any construction on the property mentioned in para-2 of the plaint. The case of the appellant is, that this stay and

summons of suit were served, thereafter the respondents entered appearance also, and sought time on 28.5.1982, on which date, with consent of the parties, the status quo order dt. 14.5.82 was extended. Notwithstanding this, in utter disregard of this interim stay order, taking advantage of the summer vacations, the respondents raised construction, inasmuch as they excavated foundation, and started erecting construction of rooms and shops etc., and that, they are out and out to complete construction during summer vacation. Thus, it was prayed that they be dealt with in accordance with law, and be punished, and their property be attached.

A reply to this application was filed, and it was pleaded, that it is not within the knowledge as to whether the notice, the stay order, and copy of suit were sent to them. However, the defendants no. 2 and 3 were served, and Vakalatnama was filed, but then, defendant no. 1 has not been served. Then, allegation about the consent having been given by the advocate was denied, and it was contended, that status quo was agreed only to be maintained upto the next date of hearing. Then, it is pleaded, that they have not raised any construction on the land in question, and certain other objections were raised, which need not detain me.

During trial, the learned trial court appointed

the Commissioner on 25.6.82, who inspected the site on 26.6.82, in the presence of defendant, and submitted the report Ex.-3, reporting construction to be continuing, and being done by Asu and Dhokal Ram and Ghewar Ram, mason. The appellant also examined himself. However, the respondent did not lead any evidence in rebuttal.

The learned trial court by the impugned order has found, that from the record, it appears that interim injunction was granted on 14.5.82, exparte, fixing the next date on 28.5.1982, and thereafter till the next date of hearing status quo was ordered to be maintained, but it is not clear as to which was the next date, and thereafter it is not clear as to whether the order was continued, or not, on the next date. Then, the report of the Commissioner was considered, and it was observed, that the report shows that work of room was going on at the house of Roop Dan, but it is not clear as to who is this Roop Dan, how is he related with the property in question. Then, the evidence of the appellant has been discussed, and narrating the above reasoning, it has been found, that there is material contradictions, between statement of the appellant and the report of the Commissioner; it has been observed, that according to the appellant construction was carried by the defendant in Bara, while according to the report of the Commissioner, the construction was carried on by Roop Dan, and that, it is not established as to what precise

construction was got raised by each of the non-petitioners, and on which particular date, and therefore, giving benefit of doubt, the contempt petition was dismissed.

I have heard learned counsel for the appellant, and have perused the record.

A look at the Commissioner's report shows, that this Roop Dan is nobody else than the Commissioner himself, and a look at the report Ex.-3 further shows, that it was on the appellant identifying the house, that the Commissioner went on the site, and found the construction to be in progress, where Asu and Dhokal Ram were dressing stones, while Ghewar Ram was erecting the construction. Likewise, it is also mentioned in the report, that it was given out to the Commissioner, that the land on which construction is being raised, is the purchased property of the defendant. In my view, the learned trial court has simply misread the report, and assumed it to be as if construction was carried on in the house of Roop Dan. The reading of construction being undertaken by Roop Dan, can be said to be no better than perverse. Then, so far as evidence of the appellant is concerned, the considerations taken into account, are not the aspects, which have been put to the appellant in cross-examination, and over and above all this, the evidence led on behalf of the appellant remains wholly un-controverted, so much so that the

respondents have not even mustard courage to step in witness box, and even deny the averment, at least by word of mouth, on oath. Likewise they have not even appeared in this court, despite service.

In such circumstances, in my view, from a combined reading of the entire statement of P.W.1, and the Commissioner's report Ex. 3, it is clear, that the respondents had raised construction, in disregard of the order of the learned trial court dt. 14.5.1982, which was extended with consent on 28.5.1982, which construction was in progress on 26.6.82, and it is not shown on record, that as on the date when the construction was in progress, interim injunction had come to an end, whether by efflux of time, or otherwise. In that view of the matter, the impugned order cannot be sustained.

Consequently, the appeal is allowed. The impugned order is set aside, and the respondents Boodh Mal and Tara Chand are held guilty of having disobeyed the interim order of the learned trial court dt. 14.5.82. Since the incident is of the year 1982, and it is informed by the learned counsel for the appellant, that ultimately the suit of the plaintiff had been dismissed, though appeal is pending, I do not stand advised to award any punishment of imprisonment, at this belated hour, i.e. after about more than 24 years, and therefore, simply direct the property of

the respondents to be attached, in accordance with the provisions of O. 39 Rule 2A C.P.C.

(N P GUPTA),J.

/Sushil/